

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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BENSHOT LLC,

Plaintiff,

v.

Case No. 18-C-1716

2 MONKEY TRADING LLC, et al.,

Defendants.

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**RULINGS ON PLAINTIFF'S OBJECTIONS TO  
DEFENDANTS' DEPOSITION DESIGNATIONS**

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Plaintiff BenShot, LLC, brought this action against Defendants 2 Monkey Trading LLC, Lucky Shot USA LLC, and Douglas Ingalls, alleging that Defendants deceptively marketed and sold a line of Lucky Shot-branded products as “Made in the USA” in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and Wisconsin common law prohibitions against unfair competition. A jury trial is set to begin on October 11, 2022.

On September 27, 2022, Plaintiff submitted objections to Defendants’ deposition designations. Defendants filed a response on October 7, 2022. One category of objection, in particular, warrants comment. Plaintiff has objected to a number of questions as leading questions. “[O]bjections which go merely to the form of the testimony—as on the ground of leading questions, unresponsiveness, or opinion—must be made at the original hearing when errors can be corrected. On the other hand, objections that go to the relevancy or the competency of the evidence may be asserted for the first time when the former testimony is offered at trial.” McCormick on Evidence § 306; *see also* Fed. R. Civ. P. 32(b), (d)(3)(A). With this in mind, the turns to Plaintiff’s objections to Defendants’ deposition designations. The Court’s rulings on Plaintiff’s objections are included in the following charts.

## 1. Jack Kimmel

Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter-Designations
15:16-19	None	None
16:9-16	None	None
16:23-17:3	None	None
17:7-9	None	None
18:23-19:2	None	19:3-8, 10-11, 14-16, 18-22
19:23-20:3	None	None
20:17-21:9	None	22:15-22, 25; 23:2-5
23:15-22	None	23:23-24:5; 24:9-10, 12-17; 24:21-25:2
28:3-14 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	28:15-16
28:17-19	None	None
31:2-14 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	31:15-21
32:3-14	None	32:18-21; 32:24-33:2
34:11-22	None	32:8-10, 13-17; 33:25-34:7
35:2-9 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness) (see Keener objections)	35:11-12; 35:15-36:1
36:25-37:3	None	37:4-6, 10-13
40:5-41:4 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay (see Keener objections)	None
45:9-24 <i>Sustained as to Lines 14-24: His understanding is not what is relevant, the reality is. His answer is based on the hearsay statements of boxes that have not been properly introduced or offered</i>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay (see Keener objections)	46:10-11, 15
46:23-47:6 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	47:8-10, 14, 17-18, 22, 24; 48:2-3
50:24-51:7 <b>Sustained</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of	51:16-52:3

	foundation; Speculation; Hearsay ( <i>see</i> counter-designations →)	
52:4-10 <b>Sustained</b>	Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections and counter-designations →)	52:11-12, 16, 23-24; 53:2-3
53:8-12 <b>Sustained</b>	Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections)	53:5-7
54:20-55:5 <b>Sustained</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703 ( <i>see</i> Keener objections and counter-designations →)	56:14-25; 57:2-4; 60:3-7, 11-14; 60:20-61:7
58:12-22	None	None
61:8-18 <b>Sustained: No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703 ( <i>see</i> Keener objections and counter-designations →)	61:20-62:1; <i>see also</i> counter-designations to lines 54:20-55:5 above
63:1-12	None	None
66:22-67:7 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness) ( <i>see</i> Keener objections)	None
68:10-69:3 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness) ( <i>see</i> Keener objections)	None
69:19-21 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	69:22-25; 70:4-10
70:13-22 - <b>Overruled</b>	Leading contrary to Fed. R. Civ.	<i>See</i> counter-designations to lines

	P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections and counter-designations to lines 69:19–21 above)	69:19–21 above
71:11–72:5  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections and counter-designations to lines 69:19–21 above)	72:6–11; <i>see also</i> counter-designations to lines 69:19–21 above
74:10–75:1  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	75:2–5
75:6–7	None	None
75:22–76:1	None	None
85:16–24 (counter-designation)  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	N/A
92:10–11(counter-designation)  <b>Sustained: irrelevant, confusing, 403, no context</b>  <b>No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible “expert” opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701–703 ( <i>see</i> Keener objection)	N/A
92:14–15 (counter-designation)  <b>Sustained: irrelevant, confusing, 403, no context</b>  <b>No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible “expert” opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701–703 ( <i>see</i> Keener objection)	N/A
109:9–23  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness) ( <i>see</i> Keener objections)	None

110:10-24 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
111:1-3 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
111:8-20 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
111:25-112:6 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	112:14-21
113:17-114:19 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections and counter-designations →)	114:20-115:1; 115:4

## 2. Chad Maskill

Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter-Designations
16:13-22	None	15:2-16:6; 17:5-15
21:1-8 <b>Sustained: irrelevant</b>	Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections); Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	20:17-25; 21:10-11, 15-16
27:19-25	None	22:9-22; 25:4-7, 15-25; 26:4-6, 16-20; 26:24-27:3; 27:7-16; 28:10-29:2
30:6-25 <b>Sustained</b> <b>Lines 16-14: irrelevant</b> <b>Lines 15-25: no foundation</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections and counter-designations →); Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	29:23-30:5; 31:2-13, 16; 31:18-32:9; 32:20-33:1; 33:5-6, 8-15; 63:14-17; 63:19-64:21
34:19-35:1	None	35:5; 36:8-10; 38:1-21; 38:24-39:7, 39:11

39:13-24	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
<b>Sustained: Leading Overruled</b>	Lack of foundation; Speculation; Hearsay ( <i>see</i> Keener objections)	40:1-3, 13-15, 19; 40:21-41:3
42:4-8	None	41:19-24
42:18-44:8	None	<i>See</i> counter-designations to lines 42:4-8 above
44:19-25	None	None
45:9-24	None	None
52:19-53:9	None	52:16-18
61:12-62:1	None	61:6-11; 62:2-10
67:14-68:11	None	65:12-18; 65:21-66:1
68:16-17	None	None
70:13-71:2	None	None
72:13-25	None	None
<b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	73:1-15, 19-20; 73:22-74:4; 74:7-8; 75:5-6, 10, 12-13, 17; 80:3-7, 12-16, 20-21, 23-24; 81:3-6, 8-12

### 3. Austin Oliver

Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter-Designations
6:12-21	None	6:25-7:4
8:2-4	None	None
8:9-22	None	None
9:3-10	None	None
12:5-11	None	12:12-17
12:25-13:4	None	None
14:1-3	None	None
14:6-11	None	None
14:14-22	None	None
15:2-4	None	None
<b>Overruled</b>	Lack of foundation; Speculation ( <i>see</i> counter-designations →)	15:9-12 (indicating that he does not recognize the document)
<b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
<b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	19:25-20:24
28:19-23	None	28:5-11
40:15-24	None	40:25-41:2

41:3-10 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
41:13-15	None	None
41:18-20	None	None
42:5-10	None	None
42:19-21 <b>Overruled: objection waived; failure to object where question could have been corrected, no objection to form</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
45:8-10	None	45:11-13
59:19-60:2	None	None
64:9-19 <b>Overruled (assuming email comes in)</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Hearsay	63:5-8
69:15-25 <b>Sustained: irrelevant, speculation</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation	None
77:17-78:4 <b>Sustained as to Lines 78:3-4: 403, unclear, ambiguous, vague</b> <b>But overruled as to the rest</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703	77:7-14; 78:5-7
80:20-81:1	None	None
86:12-17 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
96:7-16 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
97:1-5 <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
103:19-104:6 <b>Sustained</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly	104:7-10

<p><b>Vague, no personal knowledge</b></p> <p><b>No response to objection by Defendants</b></p>	<p>employee-witness); Lack of foundation; Hearsay; Irrelevant; Unreasonable risks of confusing the issues and misleading the jury, contrary to Fed. R. Evid. 403, given that he cannot identify any other seller, much less any other competitor; Lucky Shot is trying to fabricate “competitors” without any expert opinion or supporting information (e.g., when they entered or exited the market, what their exact product was, where the product was made, who their target market was, what their pricing was, what their sales were (e.g., whether they were <i>de minimis</i>), whether the product was advertised as “Made in the USA,” etc.), contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703</p>	
<p>108:25-109:10</p> <p><b>Sustained</b></p> <p><b>No response from Defendants</b></p>	<p>Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants’ friendly employee-witness); Lack of foundation; Hearsay; Irrelevant; Unreasonable risks of confusing the issues and misleading the jury, contrary to Fed. R. Evid. 403, given that he cannot identify any other seller, much less any other competitor – Lucky Shot is trying to fabricate “competitors” without any expert opinion or supporting information (e.g., when they entered or exited the market, what their exact product was, where the product was made, who their target market was, what their pricing was, what their sales were (e.g., whether they were <i>de minimis</i>), whether the product was advertised as “Made in the USA,” etc.), contrary to Fed. R. Civ. P.</p>	<p>None</p>

	26(a)(2) and Fed. R. Evid. 701-703	
112:21-113:5  <b>Sustained: lack of personal knowledge</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
116:23-117:3  <b>Sustained No response from Defendants</b>	Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703	None
129:23-130:7 (counter-designation)  <b>Sustained No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703	N/A
133:18-21	None	None
149:6-15  <b>Sustained: irrelevant No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Relevance; Unreasonable risks of confusing the issues, misleading the jury, and wasting time, contrary to Fed. R. Evid. 403	None

#### 4. Gina Palmer

Defendants' Designations	Plaintiff's Objections	Plaintiff's Counter-Designations
8:19-20	None	6:13-7:2; 7:19-24; 8:2-6, 11-15
9:6-9	None	9:10-18; 10:6-11; 10:24-11:3; 25:8-16
13:1-3  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	13:4-6
13:13-23  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
16:6-12  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid.	None

	611(c) (Defendants' friendly employee-witness)	
17:9-18  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
18:1-9	None	None
18:12-19:7  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
22:5-20  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703	None
22:24-23:1  <b>Overruled</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Undisclosed, unsupported, and impermissible "expert" opinion contrary to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 701-703	None
32:23-33:8  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	31:8; 31:10-32:5; 32:14-15, 17-22; 33:2-3
33:22-34:4	None	34:5-8
35:3-10  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
41:20-42:12  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None
42:20-25  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	None

43:23-44:2  <b>Sustained: lack of foundation No response from Defendants</b>	Lack of foundation; Speculation; Hearsay; Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	44:3-15
44:16-18  <b>Sustained: lack of foundation No response from Defendants</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness); Lack of foundation; Speculation; Hearsay; Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	45:13-46:10; <i>see also</i> counter-designations to lines 43:23-44:2 above
45:1-2  <b>Sustained: lack of foundation No response from Defendants</b>	Lack of foundation; Speculation; Hearsay; Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	<i>See</i> counter-designations to lines 43:23-44:2 above
45:5-9  <b>Sustained: lack of foundation No response from Defendants</b>	Lack of foundation; Speculation; Hearsay; Violation of decision and order granting Plaintiff's motion for curative relief (DN 132)	<i>See</i> counter-designations to lines 43:23-44:2 above
47:10-11	None	47:12-14
53:19-54:8  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	53:9-10, 12-18; 54:12-21
55:3-8  <b>Overruled: objection waived</b>	Leading contrary to Fed. R. Civ. P. 30(c)(1) and Fed. R. Evid. 611(c) (Defendants' friendly employee-witness)	55:9-10, 14-18; 56:11-57:6; 60:7-10, 14-17

Dated at Green Bay, Wisconsin this 10th day of October, 2022.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge